

# Legal Research

## Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>PART 1 TYPES OF LAW .....</b>	<b>3</b>
A. Statutory Law.....	3
B. Case Law.....	4
C. Administrative Law.....	5
<b>PART 2 SOURCES OF LAW AND LEGAL AUTHORITY.....</b>	<b>6</b>
A. Sources of Law.....	6
B. Legal Authority.....	6
<b>PART 3 MATERIALS OF LEGAL RESEARCH .....</b>	<b>8</b>
A. Paper Resources .....	10
B. Computer Assisted Resources.....	11
1. Optical Discs.....	11
2. Online Legal Research .....	12
a. Computer Assisted Legal Research (CALR) .....	12
b. Search Engines.....	12
c. State Resources.....	13
d. Federal Resources.....	14
e. City Ordinances.....	14
<b>PART 4 FINDING AND CITING SOURCES OF LAW .....</b>	<b>14</b>
A. Federal Statutes .....	15
B. Federal Cases .....	15
C. State Statutes and Codes .....	16
D. State Cases.....	17
<b>PART 5 EVALUATING LEGAL RESOURCES .....</b>	<b>18</b>
<b>PART 6 READING AND INTERPRETING STATUTES .....</b>	<b>18</b>
A. Code Construction Act.....	18
B. Monitoring, Locating, and Reading New Legislation.....	18
<b>PART 7 READING AND INTERPRETING CASES .....</b>	<b>20</b>
A. Parts of a Case .....	21
1. Name or Title of the Case .....	21
2. Docket Number.....	21

3.	Decision Date .....	21
4.	Synopsis .....	21
5.	Headnote .....	21
6.	Names of Counsel .....	21
7.	Statement of Facts .....	22
8.	Opinion of the Court.....	22
9.	Decision with Judgment or Decree.....	23
B.	Shepardization of a Case.....	23
C.	Guidelines for Reading Case Law.....	24
<b>PART 8 READING AND INTERPRETING ATTORNEY GENERAL OPINIONS.</b>		<b>25</b>
<b>PART 9 THE LEGAL RESEARCH PROCESS .....</b>		<b>27</b>
A.	Step 1: Gathering, Identifying, and Analyzing the Facts .....	27
B.	Step 2: Framing the Legal Issues to Be Researched .....	27
C.	Step 3: Finding the Law .....	28
D.	Step 4: Updating .....	29
<b>CONCLUSION.....</b>		<b>29</b>
<b>APPENDIX A: HIERARCHY OF COURTS.....</b>		<b>30</b>
<b>APPENDIX B: THE LEGISLATIVE PROCESS.....</b>		<b>31</b>
<b>ANSWERS TO QUESTIONS.....</b>		<b>32</b>

## INTRODUCTION

Legal research is the investigation of information necessary to support legal decision-making. The information that provides the basis for legal opinions and decisions is called *legal authority*. Although legal research is usually conducted by attorneys, judges, or parties to the case, it is helpful for clerks and court administrators to have an understanding of the principles behind legal research, the resources available, and the procedures to follow. A judge may request, for example, that a clerk research whether a waiver for jury trial must be in writing or who has the authority to dismiss a case.

The clerk should always consult the city attorney or judge before adopting a policy or procedure. While court clerks may read and seek to understand the law, they must avoid the unauthorized practice of law for which they might be prosecuted or expose their courts to liability.

This study guide provides a summary of the necessary tools and approaches to legal research.

## PART 1 TYPES OF LAW

There are three types of law that prevail at the federal, state, and local levels of government in the United States: statutory law, case law, and administrative law. The three branches of government—legislative, judicial, and executive—create these three types of law.

The following sections discuss the three types of law and the entities that create the law. The chart below includes the branches of government, kind of laws created, and types of law assembled from each branch of government.

Kind of Law	Government Entity	Type of Law Assembled
Statutory Law	Legislature	Session laws (chronological by date of enactment of statute) Statutory codes (by subject) <i>Example: Texas Code of Criminal Procedure</i>
Case Law	Judiciary	Case reporters (chronological by date of issuance of cases) Case digests (summaries arranged by subject) <i>Example: Published opinions of the Texas Court of Criminal Appeals</i>
Administrative Law	Executive	Administrative registers (chronological by date of issuance of rules) Administrative codes (by subject) <i>Example: Texas Administrative Code</i>

### A. Statutory Law

Statutes are defined as laws passed by Congress and the various state legislatures. The legislatures pass statutes, which are signed into law by the executive branch and are later put into the federal code or pertinent state code. Such statutes are statutory law. Statutory law also includes local ordinances, which are statutes passed by a county or city government on local issues not covered by federal or state laws. States cannot pass statutes contrary to

federal law, and municipalities cannot pass ordinances contrary to state statutes or federal law.

## **B. Case Law**

The United States has a legal system that is part of the common law tradition. Common law is the body of law that developed in England and spread to the colonies that England settled or controlled. Common law consists of oral traditions derived from general customs, principles, and rules handed down over the years and reflected in the decisions of the courts. Historically, common law was unwritten law as opposed to statutory law. During the formation of the United States, the colonists relied on common law to define what behaviors were criminal. As states began to take form, most states codified common law crimes via the passage of legislation.

Case law is the byproduct of written decisions of appellate courts. Case law is the basis for precedent, the idea that previously decided cases are seen as examples, or guiding authorities, for judges' decisions in later cases with similar questions of law. *Stare decisis*, a Latin phrase meaning to "stand on what has been decided," is the principle that the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.

An appellate court's interpretation of a statute may also become precedent that lower courts must follow in issuing their decisions. Under the doctrine of precedent, it is the statute as interpreted by the court that is applied in future cases. If a legislature disagrees with the way a court has interpreted a statute, it may revise the statute or, if necessary, initiate a constitutional amendment.

In this manner, statutory law and common law become one, since courts must interpret statutory law. So, while statutory law provides the framework by which our judicial system operates, it coexists in a way that allows interpretation even of these laws and forms the basis of common law. In the legal system, there are gray areas where there is need for interpretation. A statute may appear to stand alone and speak for itself, but there will always be someone who will attempt to contest it and make a convincing argument.

Precedent is believed to promote fairness in the judicial process because it encourages similar cases to be treated alike and leads to predictability and stability in the legal system. It also saves time and energy because it enables courts to use previous research and wisdom. The written opinions of courts are considered primary sources of authority and are usually the main object of legal research.

The American court system is hierarchical in organization, meaning that higher courts have precedential authority over lower courts. In order to fully understand jurisdiction and how precedent applies, it is necessary to first understand the hierarchy of courts.

Trial courts are courts of original jurisdiction that make determinations of law and of fact, often with juries. Documents are prepared by the parties involved and are called pleadings. In most municipal court cases, pleadings consist of motions filed by either the prosecution or defense. Motions are filed before and during trial. Exhibits may be submitted into evidence during the trial and a record or transcript is made in trial courts of record. Trial courts issue judgments or decisions. On occasion, a trial court may release a written opinion that is rarely published or made generally available to the public. In Texas, the trial courts include the

municipal, justice, constitutional county, probate, county courts at law, and state district courts. On the federal level, the trial courts are the U.S. district courts.

Intermediate appellate courts (courts of appeal) have authority over trial courts in a specified geographical area or jurisdiction. Appellate courts generally do not review factual determinations made by lower courts, hear testimony, or determine the weight of evidence, but do review claimed errors of law that are reflected in the record. Appellate courts accept written briefs (statements made by counsel arguing the case) and frequently hear oral arguments. In Texas, the intermediate courts of appeals may hear cases en banc (the entire court) or in a panel of judges. These courts hear cases originating in county and district court. Appeals from municipal and justice courts are first reviewed by county level courts.

The court of last resort, often called the “supreme court,” is the highest appellate court in a jurisdiction. Texas is unique in that it has a bifurcated court system and there are two courts of last resort: the Texas Court of Criminal Appeals and the Texas Supreme Court. The Texas Court of Appeals hears criminal appeals on questions of state law; and, the Texas Supreme Court hears appeals of civil matters involving state law. The U.S. Supreme Court is the court of last resort for cases involving federal law.

There are certain matters over which a state or federal court has exclusive jurisdiction and certain matters over which a state court has concurrent jurisdiction with federal courts.

### **C. Administrative Law**

The executive branch of government dispenses administrative law. The President of the United States and the Governor of the State of Texas issue orders and create other documents with legal effect. Executive departments and offices and some state agencies, such as the Department of Public Safety (DPS), Department of State Health Services, Texas Parks and Wildlife Department, and the Texas Commission on Law Enforcement create administrative rules. Under the authority of a statute, administrative agencies often create and publish rules and regulations that further interpret statutes. These rules and regulations are published in the *Texas Register*, a publication of the Secretary of State’s Office, and most often codified into the Texas Administrative Code.

For example, DPS has established a set of rules and procedures for the Failure to Appear Program (OmniBase) under Chapter 706 of the Transportation Code. This program allows cities to contract with DPS to deny the renewal of a driver’s license to a person who fails to appear or fails to pay upon conviction of a fine-only offense. The proposed rules and procedures for this program were published in the *Texas Register*. In addition, these rules and procedures are now codified in Title 37, Sections 15.113-15.119 of the Texas Administrative Code.

<p>Q. 1. What is the general name that refers to laws created by the legislature: statutory law or administrative law? _____</p> <p>Q. 2. What does common law consist of? _____ _____</p> <p>Q. 3. Explain the principle of stare decisis. _____ _____</p>
---

True or False

Q. 4. The American court system is hierarchical in organization and higher courts have authority over lower courts. \_\_\_\_\_

Q. 5. Appellate courts review the facts of a case, hear testimony, and determine the weight of the evidence. \_\_\_\_\_

Q. 6. Where are Texas agency rules and regulations typically published? \_\_\_\_\_  
\_\_\_\_\_

## PART 2 SOURCES OF LAW AND LEGAL AUTHORITY

### A. Sources of Law

Sources of law in the United States emerged from a variety of places. In the context of legal research, the term “source of law” can refer to three different areas:

- **Concepts and Ideas:** Customs, traditions, principles of morality, and economic, political, philosophical, and religious thoughts may manifest themselves in law. Legal researchers may regard such sources of law when examining issues related to public policy.
- **Statutory Formulations:** Under federalism, the U.S. government consists of one national government, 50 autonomous state governments, and the local government of the District of Columbia. Each of these entities has an executive, legislative, and judicial branch that creates legal information that is subject to legal research. Every two years, Texas trial courts are presented the challenge of construing and conforming to new statutes passed by the Texas Legislature. Albeit distinct, trial courts also regularly adjust their understanding of such statutes in light of case law.
- **Literature:** Books, online content, law reviews, journals, and periodicals.

### B. Legal Authority

Legal authority is any published source of law setting forth rules, legal doctrine, or legal reasoning that can be used as a basis for legal decisions. The term legal authority refers to both types of legal information and to the degree of persuasiveness of that legal information.

When used to describe types of legal information, legal authority can be categorized as primary or secondary, binding or persuasive.

Primary authorities are authorized statements of law by governmental institutions, such as written opinions of the courts, constitutions, statutes, and rules of court. For example, citing a provision from the Transportation Code would be citing a primary authority.

Secondary authorities are statements about the law that are used to explain, interpret, develop, locate, or update primary authorities. An example would be citing an excerpt from *The Recorder* on how to apply a provision of the Transportation Code.

Only primary authority can be binding on the courts, but just because an authority is primary does not automatically make it mandatory to follow.

Binding authority is authority that must be followed by any court lower in the hierarchy. A Court of Criminal Appeals decision is binding on all trial and appellate courts in a case that is factually similar and with the same questions of law. A decision from an intermediate court of appeals is binding on all trial courts in the appellate court's district when the law and facts are similar. A decision from an intermediate court of appeals on a unique question of law that has never been interpreted by the Court of Criminal Appeals would not be binding on the higher court, but could be persuasive.

A court can reject a decision of a higher court as not being binding by distinguishing the cases on their facts or issues, and thus finding that the previous case is different in some significant way. A case is "on point" if it shares the same significant facts with the case at issue and does not differ in any significant facts from the instant case. Courts and researchers will often look to relevant decisions of other jurisdictions and states. Decisions that are not binding, either because they have different fact situations or because they are from another jurisdiction can still be persuasive because of the depth of analysis and quality of the reasoning in the opinion.

Secondary authorities can never be binding, but can be highly persuasive.

Q. 7. Explain the three concepts under the term "source of law." \_\_\_\_\_

\_\_\_\_\_

Q. 8. What is the difference between primary legal authority and secondary legal authority? \_\_\_\_\_

\_\_\_\_\_

Q. 9. What is meant when it is said that a legal authority is binding or mandatory? \_\_\_\_\_

\_\_\_\_\_

Q. 10. What is meant when it is said that a case is "on point"? \_\_\_\_\_

\_\_\_\_\_

Q. 11. When can a court reject a decision of a higher court? \_\_\_\_\_

\_\_\_\_\_

True or False

Q. 12. A secondary source can be binding authority. \_\_\_\_\_

## PART 3 MATERIALS OF LEGAL RESEARCH

There are three broad categories of published legal resources: primary sources; secondary sources; and index, search, or finding tools.

Primary sources are authoritative statements of legal rules by governmental bodies. They include court opinions, constitutions, statutes, and rules of court. Refer to the chart below regarding sources of primary law.

### Primary Sources of Law

Government Entity	Chronological Compilation	Topical Compilation (i.e., Subject Matter)
<b>FEDERAL</b>		
U.S. Supreme Court	<i>U.S. Reports (U.S.) Supreme Court Reporter (S. Ct.) U.S. Supreme Court Reports, Lawyers' Edition Second Series (L. Ed. 2d) U.S. Supreme Court Reports Lawyers' Edition (L. Ed)</i>	<i>U.S. Supreme Court Digest U.S. Supreme Court Digest, Lawyers' Edition West's Federal Practice Digest 3d West's Federal Practice Digest 2d Modern Federal Practice Digest Federal Digest Decennial Digests</i>
U.S. Courts of Appeals	<i>Federal Reporter, Third Series (F.3d) Federal Reporter, Second Series (F.2d) Federal Reporter (F.) Federal Cases (F. Case)</i>	<i>West's Federal Practice Digest 3d West's Federal Practice Digest 2d Modern Federal Practice Digest Federal Digest Decennial Digests</i>
U.S. District Courts	<i>Federal Supplement (F. Supp.)* Federal Reporter, Second Series (F.2d)** Federal Reporter (F.) Federal Cases (F. Case) Federal Rules Decisions (F.R.D.)***</i>	<i>West's Federal Practice Digest 3d West's Federal Practice Digest 2d Modern Federal Practice Digest Federal Digest Decennial Digests</i>
Agencies (independent and executive branch agencies)	<i>Federal Register (Fed. Reg.)</i>	<i>Code of Federal Regulations (C.F.R.)</i>
Congress	<i>Statutes at Large (Stat.)</i>	<i>United States Code (U.S.C.)</i>

\* Until 1932    \*\* Since 1932    \*\*\* Decisions on procedural rules only

STATE		
Courts	State Reporters Regional Reporters – <i>South Western Reporter, Third Series</i> (S.W.3d)	State Digests – <i>Texas Digests</i> Regional Digests – <i>Decennial Digests</i>
Agencies (independent, executive branch, and constitutional agencies)	Administrative Registers – <i>Texas Register</i>	Administrative Codes
Legislatures	Session Laws	Statutory Codes – <i>Vernon's Texas Codes Annotated</i>

Primary source materials utilized most often in municipal courts include:

- Code of Criminal Procedure
- Transportation Code
- Penal Code
- Family Code (Title 3: Juvenile Justice Code)
- Government Code
- Local Government Code
- Alcoholic Beverage Code
- Education Code
- Health and Safety Code
- Texas Administrative Code
- *Code of Judicial Conduct* (State Commission on Judicial Conduct)
- *Rules for Judicial Education* (Texas Court of Criminal Appeals)
- *Rules for Professional Conduct* (State Bar of Texas)

Secondary sources are materials about the law that are used to explain, interpret, develop, locate, or update primary sources. Examples include law reviews, legislative histories, journal articles, newsletter articles, bench books, and procedure guides. These secondary sources can be interpretative and may include analysis and critical commentary.

Secondary source materials used by municipal courts include:

- Selected Attorney General Opinions
- TMCEC *Forms Book*
- TMCEC *Bench Book*
- *The Municipal Judges Book*
- *Quick Reference Trial Handbook* (TMCEC)
- *The Recorder: The Journal of Texas Municipal Courts*
- *Annual Report of the Commission on Judicial Conduct*
- Legal Ethics Opinions of the Judicial Section of the State Bar of Texas

- A legal dictionary, such as *Black's Law Dictionary* from West\*

Indices and search tools help locate and update primary and secondary sources. The major types are digests that locate cases discussing similar points of law, annotations in annotated statutes and codes, *Shepard's Citations*, and legal periodical indexes. These tools should not be cited as authorities.

Legal resources exist in multiple mediums. Many of the resources contain more than one type of information and serve multiple functions. For example, online legal research platforms (e.g., Lexis, Westlaw, LoisLaw/FastCase, Bloomberg Law, CaseMaker) are tools used to access legal information, but they contain verbatim text of primary source materials as well as secondary sources that can be persuasive.

Municipal court clerks and court administrators will often conduct legal research by using codebooks as primary source materials supported by secondary materials, such as TMCEC course materials, newsletters, and Attorney General Opinions. Although an extensive law library is not necessarily needed in the clerk's office, the clerk should have access to legal resources via the prosecutor's office, the county law library, or the internet.

## A. Paper Resources

Traditionally, legal research was done in a law library or legal office that contained all paper forms of law. Although computer assisted legal research has become popular among researchers, some still prefer to have paper copies of the law. *Vernon's Texas Codes Annotated*, *Texas Cases*, *West Keynote Digest*, and *West Criminal Practice* are all bound copies of the law that are available from West.

Bound copies or paper resources are updated through inserts, often called "pocket parts" for statutes and slip opinions, or advance sheets for cases. They are usually updated once a year and are found in the back of each volume or code. When the pocket parts get too bulky, a new hard cover volume is published. When a researcher is using a paper resource, he or she should check for updates or changes to the law in the pocket parts or slip opinions.

Up-to-date case law can be located through computer assisted legal research sites, such as LexisNexis or Westlaw. If using paper sources, appellate cases are typically located in the *South Western Reporter, Third Series* (Texas Cases). U.S. Supreme Court decisions are reported in the *United States Reports*, *Supreme Court Reporter*, and *United States Supreme Court Reports*. Lower federal court decisions are reported in the *Federal Reporter* and *Federal Supplement*.

Texas statutes can be found in a number of places. TMCEC, in conjunction with LexisNexis and Matthew Bender Publications, publishes the *Texas Criminal and Traffic Law Manual (Judicial Edition)*, which is helpful to municipal courts in that it contains the codes or excerpts of the codes most frequently used in municipal courts.

Another excellent, albeit expensive, resource is a set of "Black Statutes" (*Vernon's Texas Codes Annotated*) available from West. "Black Statutes" are so called because of the black cover of the volumes. These are commonly found in private and public law libraries. This set

---

\* West (also known as West Publishing or the West Group) is now a business unit of Thomson Reuters. In this study guide, it will be referred to as "West."

includes the complete text of the law, case annotations that provide interpretations by courts, cross-reference sections, historical notes, and commentaries that give background interpretations of the law, a general index, some individual volume or code indices, an annotation index, and law review article citations.

### Example of “Black Statute” Entry: Section 542.501, Transportation Code

**GENERAL PROVISIONS**  
542.501  
Ch. 542  
Note 1

§ 542.501. Obedience Required to Police Officers and to School Crossing Guards  
A person may not willfully fail or refuse to comply with a lawful order or direction of:  
(1) a police officer; or  
(2) a school crossing guard who:  
    (A) is performing crossing guard duties in a school crosswalk to stop and yield to a pedestrian; or  
    (B) has been trained under Section 600.004 and is directing traffic in a school crossing zone.  
Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 724, § 1, eff. Aug. 30, 1999.

**HISTORICAL AND STATUTORY NOTES**  
Acts 1999, 76th Leg., ch. 724, in subd. (2), designated par. (A) and added par. (B).

**Prior Laws:**  
Acts 1947, 50<sup>th</sup> Leg., p. 967, ch. 421.                      Acts 1991, 72nd Leg., 1st C.S., ch. 7, § 1.21(b).  
Acts 1985, 69th Leg., ch. 368, § 4.                      Vernon’s Ann.Civ.St. art. 6701d, § 23.

**NOTES OF DECISIONS**  
In general 1  
1. In general  
Police officer who stopped motorist’s vehicle for traffic violation while motorist was rushing to find his lost son had probable cause to arrest motorist under Texas law for failing to follow lawful order of police officer and was entitled to qualified immunity in motorist’s subsequent action for unlawful arrest; motorist attempted to leave even before officer was able to get his name or address, write up a ticket, or understand motorist’s situation regarding lost son. *Gassner v. City of Garland, Tex.*, C.A.5 (Tex.) 1989, 864 F.2d 394, rehearing denied.

## B. Computer Assisted Resources

Generally, when referring to computer assisted legal research, two types of storage mediums exist: optical discs and online resources.

### 1. Optical Discs

The prevalence of devices such as tablets, smartphones, and USB flash drives have all but rendered the storage of information on optical discs as antiquated as their floppy disk predecessors. Fans of disc technology need not fear the total demise of this medium though, as some publishers still offer publications on CD-ROM and DVD. Researchers and developers are working on fourth generation disc technology that promises to hold more than one terabyte (1 TB) of data (which is equivalent to slightly more than 700,000 floppy disks).

## 2. Online Legal Research

Online services can search millions of words in a second to find a specific topic for a researcher. A researcher can narrow or broaden their search easily. The computer gives the researcher a list of results that can be printed or saved. Online services function by storing the legal information remotely on a large mainframe computer that the researcher accesses through an internet connection.

### a. Computer Assisted Legal Research (CALR)

The two leading providers of online computer assisted legal research (CALR) are Lexis and Westlaw. Both offer complete libraries of primary source materials and several secondary authorities, and offer a variety of pricing options depending on the number of persons using the system, the amount of time, and libraries accessed.

To access Lexis or Westlaw, a court needs a personal computer, an internet connection, and an access number or a password. These companies offer training on using their platforms efficiently, conducting searches, and using commands. CALR is especially helpful when researching new areas of the law or topics that have not received significant legal attention in the past. The searches can find obscure references often not included in the indexes and digests. Two types of searches are typically used. One is referred to as “Terms and Connectors,” which use connectors between terms to specify the relationships that should exist in a particular query. The other is “Natural Language,” where the query is stated as a question in plain English.

INTERNET AS A LEGAL RESEARCH TOOL	
Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Increased access to resources</li><li>• Low-cost or no-cost access</li><li>• Real time information via social media</li></ul>	<ul style="list-style-type: none"><li>• Information overload, uncertain/outdated legal information</li><li>• Imprecise and inconsistent search tools that may take more time than using fee-based resources</li><li>• “Noise” and ability to stay on top of real-time developments in a time-efficient manner</li></ul>

### b. Search Engines

News travels fast, and in no time during world history has it traveled faster than in the internet age. Increasingly, information originates on the internet. Information, however, is also migrating from tangible documents to the digital realm. Search engines like Google and Yahoo provide access to information in a manner that has singularly usurped the meaning of a “database.”

The exponential dissemination of legal information on the internet has not rendered the services of CALR service providers unnecessary; however, it has increased access to a lot of information for free. The well of information is full of “free water” but that does not mean the water is necessarily safe for consumption by the public, let alone the judiciary. Accordingly, it is essential to utilize criteria for evaluating internet legal resources. The Private Law Librarian Special Interest Section of the American Association of Law Libraries

has published a guide that features such criteria: *The Internet as a Legal Research Tool* (2012), available at [www.aallnet.org](http://www.aallnet.org) (note that a login is required to access this guide).

Both Lexis and Westlaw host meta sites that offer free legal research: LexisWeb ([www.lexisweb.com](http://www.lexisweb.com)) and FindLaw ([www.findlaw.com](http://www.findlaw.com)). Listed below are other excellent starting points for exploring the internet for legal information:

- [www.hg.org](http://www.hg.org) (Hieros Gamos)
- [www.lawsource.com](http://www.lawsource.com) (American Law Sources Online)
- [www.plol.org](http://www.plol.org) (Public Library of Law)
- [www.lawguru.com](http://www.lawguru.com) (LawGuru)
- [www.ilrg.com](http://www.ilrg.com) (Internet Legal Research Group)
- [www.law.cornell.edu](http://www.law.cornell.edu) (Legal Information Institute at Cornell Law School)
- [tarlton.law.utexas.edu](http://tarlton.law.utexas.edu) (University of Texas Law Library)
- [www.sll.state.tx.us](http://www.sll.state.tx.us) (Texas State Law Library)

### **c. State Resources**

All three branches of Texas government and all state agencies are accessible on-line:

- Texas Governor: [www.governor.state.tx.us](http://www.governor.state.tx.us) (features news, initiatives, and organization)
- Texas Legislature: [www.capitol.state.tx.us](http://www.capitol.state.tx.us) (features links to the Texas Senate, Texas House, Texas Constitution, and all statutes)
- Texas Courts: [www.txcourts.gov](http://www.txcourts.gov) (features links to Texas court-promulgated rules, information about trial and appellate courts, access to court opinion, and court-regulated agencies)

Texas statutes can be found at:

- Texas Statutes and Constitution: [www.statutes.legis.state.tx.us](http://www.statutes.legis.state.tx.us)
- Texas Administrative Code: [www.sos.state.tx.us/tac](http://www.sos.state.tx.us/tac)
- Texas Rules of Evidence: [www.txcourts.gov/rules-forms/rules-standards.aspx](http://www.txcourts.gov/rules-forms/rules-standards.aspx)

Texas decisions and opinions can be found on several websites, including:

- [www.cca.courts.state.tx.us](http://www.cca.courts.state.tx.us)

Most Texas state agencies have internet addresses. There is an information site with direct links at [www.tsl.state.tx.us/apps/lrs/agencies/index.html](http://www.tsl.state.tx.us/apps/lrs/agencies/index.html) (an alphabetical index to all State agencies).

Others sites of interest are shown below:

- [www.tmcec.com](http://www.tmcec.com) (TMCEC Home Page)
- [www.sos.state.tx.us](http://www.sos.state.tx.us) (Secretary of State)
- [www.tsl.state.tx.us](http://www.tsl.state.tx.us) (Texas State Library and Archives Commission)
- [www.oag.state.tx.us](http://www.oag.state.tx.us) (Texas Attorney General)

**d. Federal Resources**

Federal sites offer Supreme Court decisions, 5th Circuit Court of Appeals decisions, federal legislation, and the United States Code.

- [www.llsdc.org/sourcebook](http://www.llsdc.org/sourcebook) (Law Librarians’ Society of DC Legislative Sourcebook)
- [www.gpoaccess.gov](http://www.gpoaccess.gov) (U.S. Government Printing Office)
- [thomas.loc.gov/home/thomas.php](http://thomas.loc.gov/home/thomas.php) (Library of Congress)
- [www.supremecourt.gov](http://www.supremecourt.gov) (Supreme Court of the United States)
- [www.uscourts.gov](http://www.uscourts.gov) (United States Courts)

**e. City Ordinances**

Find city ordinances from cities around the U.S. and Texas:

- [www.municode.com/Library](http://www.municode.com/Library) (Municode)

Q. 13. Name the three broad categories of published legal resources. \_\_\_\_\_

\_\_\_\_\_

Q. 14. Explain the difference between primary and secondary sources and give an example of each.

\_\_\_\_\_

Q. 15. What are pocket parts? \_\_\_\_\_

\_\_\_\_\_

Q. 16. Give examples of the type of information found in “Black Statutes” and the formal title of this publication. \_\_\_\_\_

\_\_\_\_\_

Q. 17. What two companies are the main sources for computer assisted legal research? \_\_\_\_\_

\_\_\_\_\_

True or False

Q. 18. Texas statutes are accessible on the Internet. \_\_\_\_\_

**PART 4  
FINDING AND CITING SOURCES OF LAW**

To have easy access to statutes and cases, a common system of reference has been adopted. This reference to a law or case is generally called the citation, not to be confused with the citations filed in municipal courts as quasi-charging instruments or the civil notices served in bond forfeiture cases. A citation, in the legal research sense, is a reference to a source of legal authority that allows a researcher to locate a cited source.

With experience, a researcher will find that there are several ways to abbreviate statutes and codes. Questions about the form or meaning of citations, as well as determining the proper way to reference and cite legal material may be answered by consulting any of the following reference guides.

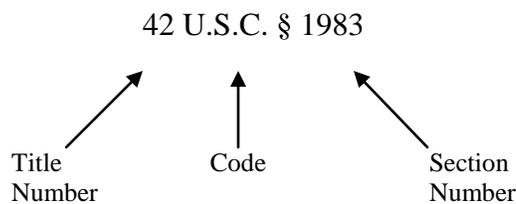
- *The Bluebook: A Uniform System of Citation*, Harvard Law Review Association.
- *Texas Rules of Form* (The Greenbook), intended as a supplement to the Bluebook, dealing exclusively with Texas case citation.
- *ALWD Citation Manual: A Professional System of Citation*, Association of Legal Writing Directors, Darby Dickerson, Stetson University College of Law; Aspen Publishers.

## A. Federal Statutes

Judges and clerks should be familiar with the following abbreviations for federal codes and statutes:

- § - Section
- U.S.C. - United States Code
- U.S.C.A. - United States Code Annotated

The citation below shows the form for a federal statute:

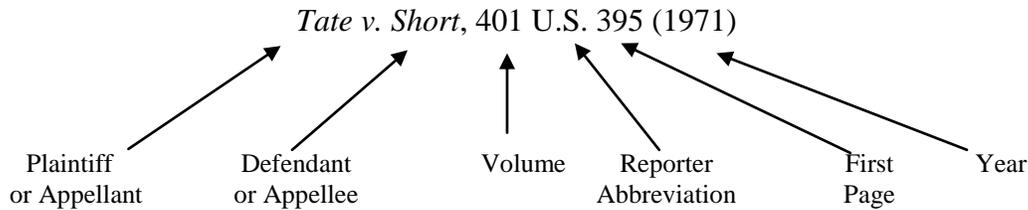


## B. Federal Cases

Judges and clerks should also be familiar with the following abbreviations as they apply to cases:

- U.S. *U.S. Reports*
- S. Ct. *Supreme Court Reporter*
- L. Ed. *Lawyers' Edition, U.S. Supreme Court Reports*
- L. Ed. 2d *Lawyers' Edition, U.S. Supreme Court Reports, Second Series*
- F. *Federal Reporter (U.S.)*
- F.2d *Federal Reporter, Second Series*
- F.3d *Federal Reporter, Third Series*
- F. Supp. *Federal Supplement*
- F. Case *Federal Cases*
- Fed. Reg. *Federal Register*

The following citation shows the form for a federal case.



When the case starts in trial court, the first name is the plaintiff’s or the State’s and the name following the *v.* is the defendant’s. The *v.* stands for versus. Upon appeal, the name of the party who is appealing the case is usually listed first.

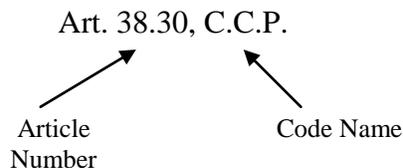
### C. State Statutes and Codes

Judges and clerks should recognize the following abbreviations used by TMCEC for state codes and laws frequently used in municipal courts.

- A.B.C. Alcoholic Beverage Code
- C.C.P. Code of Criminal Procedure
- E.C. Education Code
- F.C. Family Code
- G.C. Government Code
- H.S.C. Health and Safety Code
- L.G.C. Local Government Code
- O.C. Occupations Code
- P.C. Penal Code
- P.W.C Parks and Wildlife Code
- T.A.C. Texas Administrative Code
- T.C. Transportation Code
- Art. Article
- Sec. Section

In general, Texas codes are organized by titles, chapters, and sections. Most Texas codes use “section” to refer to a specific statute, but not all codes. For example, the Code of Criminal Procedure uses “article” and the Texas Administrative Code uses “rule” when referring to a specific statute.

The citation below shows the form for a state statute:



## D. State Cases

Texas court cases are typically published in the *South Western Reporter* (frequently referred to as the *South West Reporter*). The compilation of case law has grown into three volumes: S.W., S.W.2d, and S.W.3d.

The citation below shows the form for a state case in which the opinion was issued by the Texas Court of Criminal Appeals.

*Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999).

Name of Case      Volume      Reporter Abbreviation      Page      Court      Year

The citation below shows the form for a state case in which the appellate court, the 1st District in Houston, issued the opinion. The last notation “no pet.” means that it was not appealed to the Texas Court of Criminal Appeals.

*State v. Johnson*, 896 S.W.2d 277 (Tex. App.–Houston [1st Dist.] 1995, no pet.).

Court      City      Year

Q. 19. What is a citation, in the legal research field? \_\_\_\_\_

\_\_\_\_\_

Q. 20. What are the *Bluebook* and *ALWD*, and what are they used for? \_\_\_\_\_

\_\_\_\_\_

Q. 21. Identify what the following abbreviations stand for.

U.S.C.: \_\_\_\_\_

S. Ct.: \_\_\_\_\_

F.2d: \_\_\_\_\_

S.W.2d: \_\_\_\_\_

v. \_\_\_\_\_

Q. 22. Identify what codes the following abbreviations stand for.

A.B.C.: \_\_\_\_\_

C.C.P.: \_\_\_\_\_

E.C.: \_\_\_\_\_

F.C.: \_\_\_\_\_

G.C.: \_\_\_\_\_

H.S.C.: \_\_\_\_\_

P.C.: \_\_\_\_\_

## **PART 5 EVALUATING LEGAL RESOURCES**

When inspecting and evaluating legal resources, the purpose of the resource must first be determined. The author or editor should be noted and the type of legal authority (primary or secondary and binding or persuasive) should be distinguished.

Often, as an individual becomes experienced in researching legal issues, many gray areas of the law that do not reflect a specific statute or precedent to follow will be encountered. When this occurs, examining secondary source materials may be helpful.

## **PART 6 READING AND INTERPRETING STATUTES**

A statute, often referred to as legislation, is a statement of a legal rule enacted by the Legislature and signed by the Governor or allowed to take effect without the Governor's signature.

### **A. Code Construction Act**

The Code Construction Act, now codified in Chapter 311 of the Government Code, applies to all laws passed from the time of the 60th Legislature, including amendments, repeals, revisions, or reenactments of any provision of all Texas statutes. Sec. 311.002, G.C. It is, in essence, the law on how to read the law. The rules of construing statutes, contained in the Code Construction Act, are discussed at length in the *Code of Criminal Procedure and Penal Code* chapter of this study guide.

### **B. Monitoring, Locating, and Reading New Legislation**

The Texas Legislature meets in regular session every two years in the odd-numbered years for 140 days. The regular session starts on the second Tuesday in January. The Texas Constitution allows the Governor to call special sessions when needed, but these sessions cannot exceed 30 days and may only consider legislative issues specified by the Governor. Like most other states, Texas has a bicameral system with a 31-member Senate and a 150-member House of Representatives. State senators and representatives are elected from single-member districts to serve four-year and two-year terms, respectively.

A proposed law is called a bill. It may be drafted by a legislator or by the Texas Legislative Council, a state agency that provides bill drafting services, research assistance, computer support, and other services for the House and Senate. Attorneys, lobbyists, and citizens may also draft bills that may only be introduced by a legislator or be substituted by a legislative committee.

The chart in *Appendix B* outlines the lengthy legislative process. In both houses, bills must be heard at three readings, be assigned to a committee, and go through a process of committee review and floor action. The bill may be amended at many steps throughout the process, but the final enrolled bill that is sent to the Governor for signature must be agreed upon by both houses.

Most bills are amended frequently, thus, it is important that court personnel understand how to read proposed legislation. Underlining indicates new language that is to be added to a statute or law. “Strike-thru” indicates language to be deleted or changed.

H.B. No. 1174

AN ACT

relating to the penalties for illegally passing a stopped school bus.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 545.066(c), Transportation Code, is amended to read as follows:

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 [~~\$200~~] or more than \$1,250 [~~\$1,000~~], except that the offense is:

(1) a misdemeanor punishable by a fine of not less than \$1,000 or more than \$2,000 if the person is convicted of a second or subsequent offense under this section committed within five years of the date on which the most recent preceding offense was committed;

(2) a Class A misdemeanor if the person causes serious bodily injury to another; or

(3) [~~(2)~~] a state jail felony if the person has been previously convicted under Subdivision (2) [~~(4)~~].

SECTION 2. (a) The change in law made by this Act applies only to an offense committed on or after September 1, 2013.

(b) An offense committed before September 1, 2013, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before September 1, 2013, if any element of the offense was committed before that date.

SECTION 3. This Act takes effect September 1, 2013.

After the close of the session, all of the laws passed during each session are published in volumes referred to as session laws. West prints each session’s laws in paperback in chronological sequence. After the legislative session, the laws are then incorporated into *Vernon’s Texas Codes Annotated*.

The Texas Municipal Courts Education Center offers a legislative issue of *The Recorder* in August following each session. This publication summarizes all of the pertinent legislation affecting municipal courts. Summaries of new laws of general interest to cities are also found in the newsletter of the Texas Municipal League. Copies of enrolled bills passed by each session are available online at the Texas Legislative Council website at [www.tlc.state.tx.us](http://www.tlc.state.tx.us).

The Texas Legislature Online website ([www.capitol.state.tx.us](http://www.capitol.state.tx.us)) allows for the viewing and downloading of Texas statutes, codes, and Constitution. Users can also research filed bills, read current and past legislation, and find out more about the legislative process.

In addition, there are commercial providers of recent legislation. The services offered by these providers vary from paper copies of bills, online services with full text of bills, legislative tracking, record votes, weekly bulletins, committee schedules and reports, floor calendars, clipping services, and more. These often require a fee and internet account to access.

Q. 23. How often does the Texas Legislature meet? \_\_\_\_\_  
\_\_\_\_\_

Q. 24. What are the two houses that compose the Texas Legislature called? \_\_\_\_\_  
\_\_\_\_\_

True or False

Q. 25. A bill must be approved in identical form by both houses before being sent to the Governor.  
\_\_\_\_\_

Q. 26. Below is an excerpt from a recent piece of legislation. Which phrases were added? Which were deleted?

SECTION 1. Section 545.066(c), Transportation Code, is amended to read as follows:

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$500 [~~\$200~~] or more than \$1,250 [~~\$1,000~~], except that the offense is:

(1) a misdemeanor punishable by a fine of not less than \$1,000 or more than \$2,000 if the person is convicted of a second or subsequent offense under this section committed within five years of the date on which the most recent preceding offense was committed;

(2) a Class A misdemeanor if the person causes serious bodily injury to another; or

(3) [~~2~~] a state jail felony if the person has been previously convicted under Subdivision (2) [~~1~~].

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Q. 27. What are session laws? \_\_\_\_\_  
\_\_\_\_\_

Q. 28. Where can you get a copy of a bill? \_\_\_\_\_  
\_\_\_\_\_

## PART 7 READING AND INTERPRETING CASES

When researching a legal question, it is imperative that the researcher look for related case law. As discussed earlier, the term case law refers to the idea that the opinions from cases have precedent and therefore can be a binding authority for judges deciding a matter of law. Judicial opinions also have an effect on how a statute is applied; judicial opinions can declare a statute unconstitutional, giving guidance and direction as to how that law would then be applied. Under the principle of stare decisis, the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.

## **A. Parts of a Case**

Whether the case is read as a slip opinion (an individual court decision published separately as soon as it is rendered), on an advance sheet (a pamphlet of court decisions circulated prior to the bound volumes), or in a bound volume, the following elements of a case are usually there.

### **1. Name or Title of the Case**

Cases generally are identified by the names of the parties to the lawsuit, for example, the citation *Tate v. Short*, 401 U.S. 395 (1971) indicates that the parties involved are Tate and Short.

Some cases are shown as *In re Gault*, 87 S. Ct. 1428 (1967), which signifies that there were no adversary parties in the proceeding. Such a designation usually indicates a habeas corpus case, a guardianship matter, a contempt case, disbarment, a bankruptcy, or a probate case. The *Gault* case, for instance, involved a juvenile. The words “In re” mean in the affair; in the matter of; concerning.

Cases may also be shown as *Ex parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978). “Ex parte” means that a special proceeding was involved. Here ex parte means by or for one party; done for; on behalf of. This case involved an appeal from an order entered by a county court at law denying the petitioner’s application for habeas corpus.

### **2. Docket Number**

A docket number is assigned by the clerk when the case is filed with the court.

### **3. Decision Date**

The decision date refers to the date that the court hearing the case posted an opinion.

### **4. Synopsis**

The synopsis reviews the facts of the case, its disposition in the lower court, the name of the lower court, and the holding in the case in the appellate court (*affirmed, reversed, affirmed in part, reversed in part*, and so forth), the last name of the judge who authored the opinion, and the last names of the judges who authored or joined in a concurring or dissenting opinion.

### **5. Headnote**

The legal editor writes a headnote, which is a summary of all the points discussed in the case. Each headnote represents a point of law extracted from the decision. If there are many headnotes, there are many points of law in the opinion. West, for example, assigns sequential numbers in brackets [1], [2], or [3], etc., before the headnote summary and places these in the opinion to help the reader locate the discussion on that point of law. West also assigns key numbers to names and phrases and codes the headnotes in this manner.

### **6. Names of Counsel**

The names of counsel are the attorneys who were active in the case, both on the side of the State/plaintiff and the side of the defendant.

## **7. Statement of Facts**

Prior to the opinion of the case, a statement of the facts is presented. This is a summary of the case, including both parties' basic arguments. The statement of facts is important to a researcher because the researcher gets a review of the case without reading the opinions of the lower courts or the original petitions sent to the court.

## **8. Opinion of the Court**

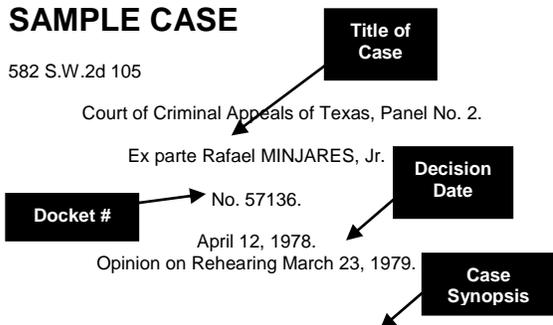
The opinion of the court is the explanation of the court's decision, conclusion, or result in the legal controversy before the court.

The various types of opinions are explained below.

- A majority opinion is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value.
- A separate opinion may be written by one or more judges and indicates that he or she concurs in or dissents from the majority. A judge can also dissent or concur without writing a separate opinion.
- A concurring opinion agrees with the results reached by the majority, but disagrees with the precise reasoning of the majority opinion.
- Dictum is language in an opinion that is not necessarily essential to the holding of the decision and does not embody the determination of the court; this, it is not binding on the courts.
- A dissenting opinion disagrees with the result and the reasoning of the majority. Dissenting opinions are not law in a case; nor are they binding as precedent. They assume the characteristics of dictum and serve as persuasive or secondary authority. Occasionally, the controlling opinion may later be overruled and the dissenting opinion is accepted as law.
- A plurality opinion (called a judgment by the Supreme Court) is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result.
- A per curium opinion is an opinion by the court which expresses its decision in the case but whose author is not identified.
- A memorandum (mem.) opinion is a holding of the whole court in which the opinion is very concise.

## SAMPLE CASE

582 S.W.2d 105



Court of Criminal Appeals of Texas, Panel No. 2.

Ex parte Rafael MINJARES, Jr.

Docket #

No. 57136.

Decision Date

April 12, 1978.

Opinion on Rehearing March 23, 1979.

Case Synopsis

The County Court at Law, El Paso County, John L. Fashing, J., denied application for habeas corpus, and petitioner appealed. On motion for rehearing, the Court of Criminal Appeals, Odom, J., held that: (1) for fines and accumulated jail terms, good time credits cannot be earned concurrently against each fine or jail term, but to contrary, treating them as one, good time credits could be earned by petitioner only against aggregate punishment, and (2) petitioner was entitled to such good time credits as he had earned while inmate of county jail against his municipal court traffic fines and costs, and absence of formal sentence could not be used to deny him that credit.

Motion for rehearing granted, order denying release set aside, and cause remanded.

Douglas, J., filed a dissenting opinion on motion for rehearing.

Key Number

West Headnotes

Head Notes

[1] Prisons ⇨ 15(3)  
310k15(3)

Statute which provides that prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence did not transform petitioner's nine traffic fines into one but merely provided that, for commutation purposes, fines were to be treated as if they were one, and thus good time credits could not be earned concurrently against each fine or jail term, but to the

contrary, treating them as one, good time credits could be earned by petitioner only against aggregate punishment. Vernon's Ann.Civ.St. art. 5118a.

Copr. © West 2002 No Claim to Orig. U.S. Govt. Works

[2] Prisons ⇨ 15(3)  
310k15(3)

Absence of formal sentence in municipal court prosecution does not render inapplicable statute which provides that prisoner under two or cumulative sentences shall be allowed commutation as if they were all one sentence, and thus petitioner was entitled to such good time credits as he had earned while inmate of county jail against his municipal court traffic fines and costs and absence of formal sentence could not be used to deny him that credit. Vernon's Ann.Civ.St. art. 5118a.

[3] Fines ⇨ 11  
174k11

Petitioner, who after hearing had been found to be indigent, could not be imprisoned because he was too poor to pay his accumulated traffic fines, and thus was entitled to immediate discharge from custody.

Names of Counsel

\*106 W. Stephen HERNBERGER, El Paso, court appointed, for appellant.

Before ONION, P. J., and DOUGLAS and ODOM, JJ.

OPINION

Statement of Facts

DOUGLAS, Judge.

Rafael Minjares appeals from an order denying relief on his application for a writ of habeas corpus. On September 23, 1977, petitioner was convicted in the municipal court of El Paso upon his plea of guilty to seven traffic law violations. The court assessed the

## 9. Decision with Judgment or Decree

The decision contains one of the following terms: affirmed, reversed, reversed and remanded, or modified. "Affirmed" denotes that the appellate court reached a decision that agrees with the result reached in the case by the lower court. "Reversed" denotes that the appellate court disagrees with the result reached by the lower court in the case. "Reversed and remanded" denotes that the appellate court disagrees with the lower court and that the case is to be returned to either a lower appellate court or trial court for further proceedings. "Modify" denotes that the appellate court is reforming part of the decision of the lower court.

### B. Shepardization of a Case

The law is ever changing; therefore researchers must have an avenue to check the case or statute to determine if it is still "good" law (a law that has not been overturned by case law or a change in the statute). Shepardizing is the easiest and quickest way to determine if a case can be relied upon and has not been reversed by a higher court or overruled by a subsequent decision of the same court. Shepardizing will also help the researcher to determine whether a case has been superseded (or made into "bad" law) by statute. This is done using *Shepard's*

*Citations*, which are available on CD-ROM, on legal research websites, and in bound volumes in most law libraries.

The *Shepard's Citations* or *Citators* serve numerous purposes, including the following:

- to verify that the case still has precedential value and has not been overturned;
- to locate parallel citations;
- to identify other primary and secondary sources of legal information on the topic; and
- to review writ and petition history notations.

Judges and clerks should understand the reasons why a researcher would shepardize a case.

### **C. Guidelines for Reading Case Law**

Presented below are general guidelines on how to analyze and apply case law.

- Whether the court deciding the case creates precedent for the trial or appellate court in an area being researched should be determined. For example, Texas is in the 5th Circuit Court of Appeals in the federal system; thus, all 5th Circuit Court decisions would apply to Texas municipal court proceedings.
- The facts of the case being researched should be understood.
- The legal reasoning employed by the court in deciding the case should be understood.
- The court's actual decision on the issues and the legal principles that are necessary to arrive at the decision should be identified. These may be precedent or persuasive authority.
- The facts of the situation should be compared to the facts of the case.
- The issues in the situation should be compared with the issues in the case.
- Whether the case serves as direct precedent for or against the situation should be determined.
- Whether the legal reasoning of the case provides any guidance as to whether the court would decide differently on the facts of the situation should be determined.
- If the issues are the same and the facts are the same or similar, then the case stands as a precedent in the situation.
- If the issues are the same, but the facts are different, then the case will not have much effect on the situation.

Q. 29. How are cases named or identified? \_\_\_\_\_

\_\_\_\_\_

Q. 30. What is the significance of *In re* when shown in a cited case? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Q. 31. What is the significance of *Ex parte* when shown in a cited case? \_\_\_\_\_

\_\_\_\_\_

Q. 32. Who usually writes the headnote to a case? \_\_\_\_\_

\_\_\_\_\_

Q. 33. What is the main difference between a majority and concurring opinion? \_\_\_\_\_

\_\_\_\_\_

Q. 34. What is a plurality opinion? \_\_\_\_\_

\_\_\_\_\_

Q. 35. What does “affirmed” mean? \_\_\_\_\_

\_\_\_\_\_

Q. 36. What does it mean when a court reverses a case? \_\_\_\_\_

\_\_\_\_\_

Q. 37. Why should a researcher shepardize a case or statute? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## PART 8

### READING AND INTERPRETING ATTORNEY GENERAL OPINIONS

Because many of the issues of interest to municipal courts have not been considered by an appellate court, attorney general opinions tend to take on more significance than they do in county and district courts.

The Attorney General is granted the power to issue opinions on questions of law in Sections 402.042 and 402.043 of the Government Code. These sections also set out which state and local officials can request opinions. Those authorized by statute to request opinions include:

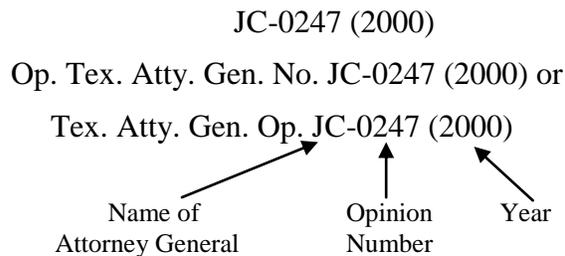
- the governor;
- the head of a department of state government;
- the head or board of a penal institution;
- the head or the board of an eleemosynary institution;
- the head of a state board;
- a regent or trustee of a state educational institution;
- a committee of a house of the Texas Legislature;
- a county auditor authorized by law; and
- the chairman of the governing board of a river authority.

The Attorney General also advises district or county attorneys in certain instances.

The opinions are organized by the name of the Attorney General at the time the opinion was released and numbered chronologically. Shown below are the Attorneys General who have served Texas in the last 65 years and their approximate years of service.

- KP: Ken Paxton – 2015 to present
- GA: Greg Abbott - 2002 to 2014
- JC: John Cornyn - 1999 to 2002
- DM: Dan Morales - 1991 to 1998
- JM: Jim Mattox - 1983 to 1990
- MW: Mark White - 1979 to 1982
- H: John Hill - 1973 to 1978
- M: Crawford Martin – 1967 to 1972
- C: Waggoner Carr - 1963 to 1966
- WW: Will Wilson - 1957 to 1962
- S: John Ben Sheppard - 1953 to 1956
- V: Price Daniel - 1947 to 1952
- O: Grover Sellers - 1944 to 1946
- O: Gerald Mann - 1939 to 1943

Attorney general (A.G.) opinions are cited in one of the three formats below.



Are attorney general opinions binding on any segment of the Texas judiciary? No. The Attorney General acknowledged the limited authority of his own opinions in Attorney General Opinion No. O-7234-A (1946): “The opinions of the Attorney General have not the force of law and are legally binding on no one. They may be highly persuasive to the courts but apparently only in those cases where they coincide with the court’s view of the law.”

While attorney general opinions are entitled to careful consideration by the courts, and are regarded as highly persuasive, they are not binding on the judiciary. Because the Legislature has specifically delegated to the Attorney General the duty of interpreting and enforcing the Open Records Act, greater weight is given to attorney general opinions when they pertain to the Open Records Act.

Exercise caution in interpreting and applying attorney general opinions. Because of legislative amendments, previously issued opinions may no longer be valid; while more recent opinions may overrule part or all of previous opinions.

Copies of attorney general opinions can be obtained from the Attorney General’s website at [www.oag.state.tx.us/opin](http://www.oag.state.tx.us/opin).

Q. 38. How are attorney general opinions organized? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Q. 39. Are attorney general opinions binding on the court? \_\_\_\_\_

## PART 9 THE LEGAL RESEARCH PROCESS

There are many different acceptable approaches to legal research. Legal research guides are available for persons anywhere on the experience continuum. Shown below are the four steps most commonly applied.

### **A. Step 1: Gathering, Identifying, and Analyzing the Facts**

To start, the facts must be gathered, identified, and analyzed. It is often helpful to ask: Who? What? When? Where? Why? and How? Recall that the rules stated by courts are tied to specific fact situations and must be considered in relation to those facts. Because the facts of a legal problem will control the direction of the research, the investigation and analysis of facts must be incorporated into the research process. Analyze what you want to accomplish and what results you want. Again, the facts of any given situation will dictate the issues of law that need to be researched.

### **B. Step 2: Framing the Legal Issues to Be Researched**

The goal is to classify or categorize the problem into general and increasingly specific subject areas and to begin to hypothesize legal issues. Consider the following questions:

- Which branch of government is involved: legislative, judicial, or executive?
- Is the matter civil or criminal?
- Does it involve federal law, state law, or local ordinance?
- Is it substantive or procedural?
- Who has jurisdiction?
- Are the sources consulted binding or persuasive?

Often, it is useful to consult secondary sources for an overview of the relevant areas. These might include past issues of *The Recorder*, a chapter in *The Municipal Judge's Book*, a handout from a TMCEC seminar, or a law review article. The search should start with the most general and progress toward the specific.

A clear, concise statement of each legal issue raised by the significant facts of the case should be written. It is preferred to err on the side of too many issues rather than too few. Insignificant issues can be eliminated later.

A systematic and methodical approach is essential to the research process. Keeping organized notes and records is critical. For each issue, it is important to decide which sources to use and the order in which to examine them. Notes should be kept regarding sources searched on each issue, even if the sources are repeated in earlier searches. As information is found, where it was found and why it is relevant should be recorded. A list of sources consulted, sources to be consulted, terms and topics checked, and steps to update should be maintained. This will prevent inefficient use of time and overlooking information.

### C. Step 3: Finding the Law

Once a list of questions has been developed, take from those questions a list of key terms. Key terms are words and phrases that may lead a researcher to a legal answer. Often, it helps to phrase each key word in as many different ways as possible to find more leads to useful information. While researching, continue to add key words to the list as they are realized.

In searching for applicable law, using the key terms, look in the table of contents and the index. If the particular provision is not found in the index or table of contents, the next step is to identify the time reference the provision falls under. For example, in locating information in the Code of Criminal Procedure, whether the provision falls in the pre-trial, trial, or appeal process should be determined. Once the time reference has been established, which part of the code, or of Chapter 45, to search will be identified, since the Code of Criminal Procedure is generally organized according to the sequential steps in a trial. Or, if researching a provision relating to witness subpoenas, searching the portion of the code that contains the appellate provisions would be unproductive, since witness subpoenas would issue before the trial.

If, after these steps have been followed, the statute has not been located, the question should be rephrased, new key terms should be developed, and the entire process repeated.

If a statute is found that appears to answer the question, the next step involves evaluating and determining if the facts of the question fall into the statutorily specified factual elements of the statute. The meaning of the words should be considered to establish if they are defined in the statute or elsewhere in the code. It may be necessary to determine legislative intent behind the statute using the context of the statute. To do this, a researcher will need to review the legislative history of the statute—documents such as revised versions of bills, legislative debates, committee reports, and committee hearings.

All relevant case law should be identified, read, and updated. The search should not be limited to cases that support the position taken. Instead, both sides of an argument and contrary conclusions should be anticipated and identified. Cases that offer both binding and persuasive authority should be located. Cases that interpret statutes can be identified in several ways:

- Annotated statutes and codes that list interpretative cases after each statutory provision. An example of a codified statute in *Vernon's* is shown in Part 3 of this guide.
- *Shepard's Citations*, which provides a list of cases that cite a statute or other cases on a particular issue.
- Computer assisted legal research from Westlaw, Lexis, or some other CALR.

As each case is read and briefed, its full citation, parallel citations, the judge and court issuing the opinion, the date of the decision, the relevant facts, the holding, a summary of the court's reasoning, key numbers assigned, and the sources cited by the court should be noted. Each of the sources cited should be read, briefed, and shepardized and new cases added to the list. Each case briefed should be incorporated into the outline. Cases that are "on point" should be registered, so that the opinion will guide the court.

After identifying, reading, and organizing the primary sources, the secondary sources should be investigated to refine the search and expand the argument.

#### **D. Step 4: Updating**

The law is modified or changed constantly. Pocket parts, supplements, and advance sheets should be assessed for modifications or changes that may have occurred since initiating a search. CALRs such as Lexis and Westlaw are helpful to make certain that significant changes or cases are not overlooked.

At this point, the search is ready to be presented to a supervisor, city attorney, or presiding judge.

True or False

Q. 40. There is only one correct method in conducting a legal research project. \_\_\_\_

Q. 41. Name at least three questions that should be asked to help frame the legal issue. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Q. 42. Why would a secondary authority be consulted in framing the legal issue to be researched?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

True or False

Q. 43. Since case law interprets statutes, courts should research cases and statutes when determining how to administer statutes. \_\_\_\_

Q. 44. After completing research on the legal issue, why is it important to update the search one last time? \_\_\_\_\_

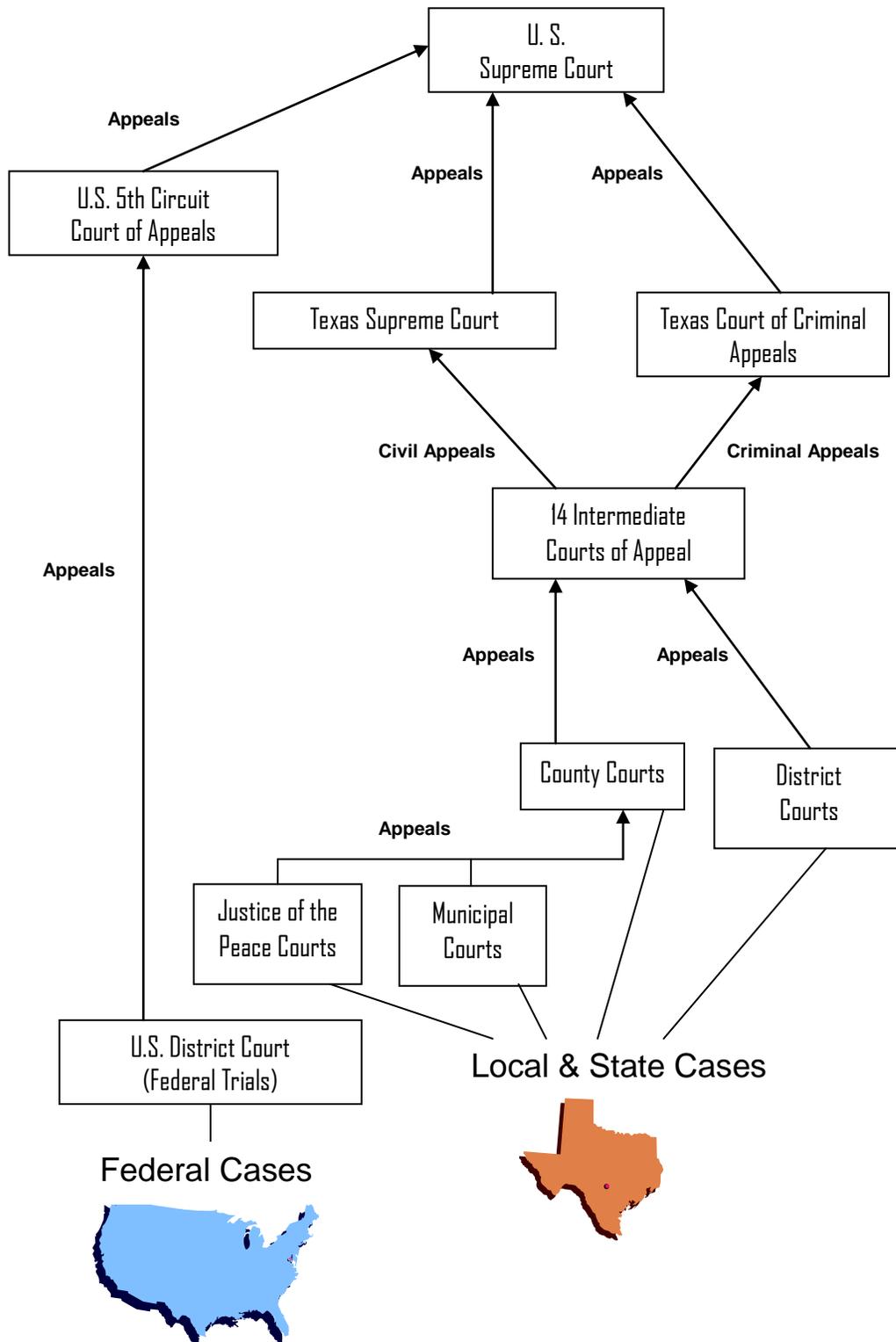
\_\_\_\_\_

### **CONCLUSION**

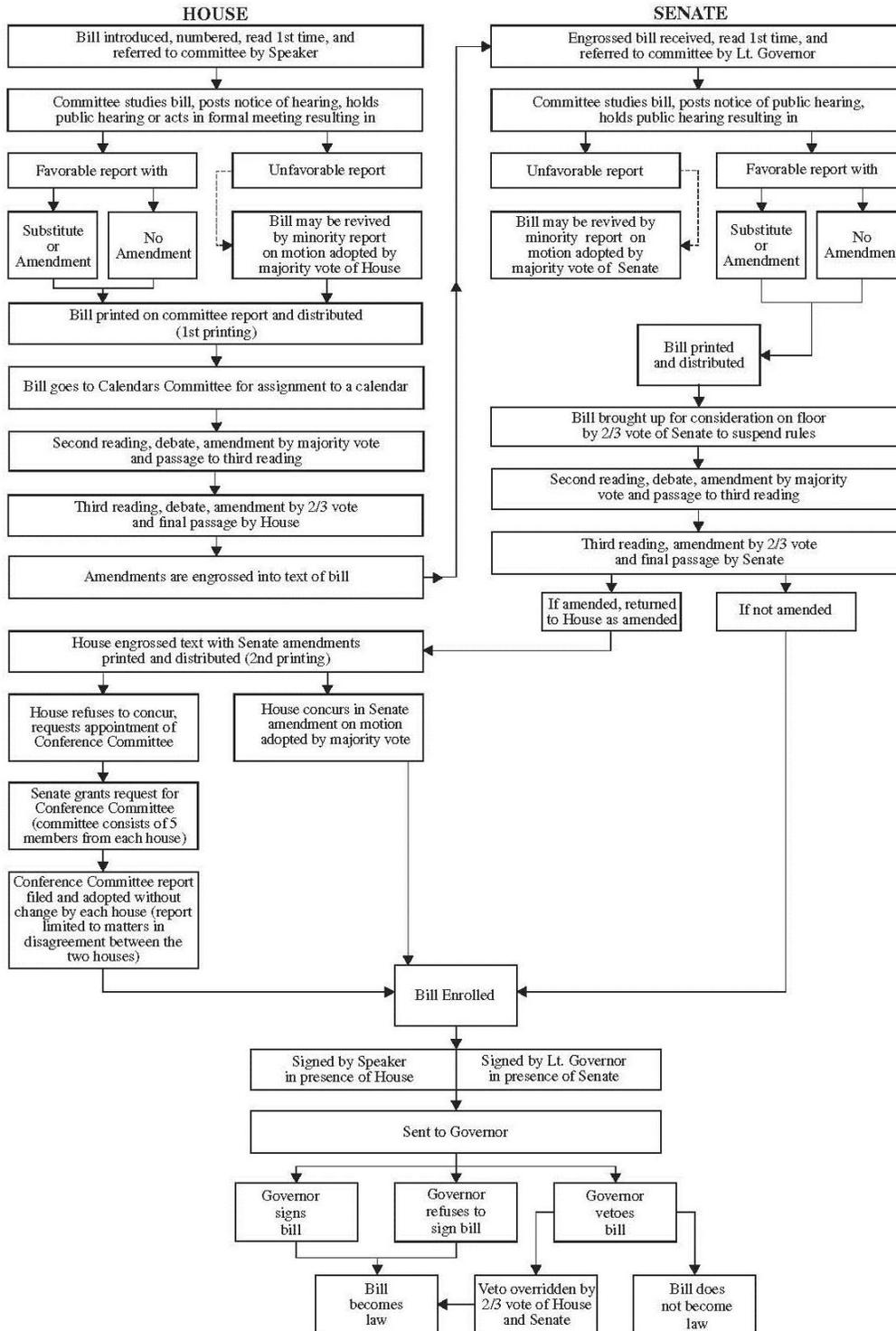
This chapter was written as an introduction to legal research and provides only a basic look at the broader topic of legal research and writing. All court personnel are advised to consult their city attorney or presiding judge before adopting policies and procedures. Court clerks should not substitute their own independent legal research for the advice of an attorney or the judges in their court. Nor should clerks ever place themselves in the position of giving legal advice to the public, friends, or any person appearing before the court.

Additional training in legal research may be obtained from law schools and educational programs for paralegal and legal assistants. The State Bar of Texas (512.463.1463) and American Bar Association maintain lists of both.

## APPENDIX A: HIERARCHY OF COURTS



## APPENDIX B: THE LEGISLATIVE PROCESS



## ANSWERS TO QUESTIONS

### PART 1

- Q. 1. Statutory law.
- Q. 2. Common law consists of oral traditions derived from general customs, principles, and rules handed down over the years and reflected in the decisions of the courts.
- Q. 3. Stare decisis, which means to “stand on what has been decided,” is the principle that the decision of a court is binding authority on the court that issued the decision and on lower courts in the same jurisdiction for the disposition of factually similar cases.
- Q. 4. True.
- Q. 5. False (this is the role of trial courts).
- Q. 6. In the *Texas Register*, published by the Secretary of State, or in the Texas Administrative Code.

### PART 2

- Q. 7. The term “source of law” can refer to three concepts:
- concepts and ideas, such as customs, traditions, principles of morality, and economic, political, philosophical, and religious thoughts;
  - statutory formulations from the federal, state, and local governments; and
  - literature, such as books, online content, law reviews, journals, and periodicals.
- Q. 8. Primary authorities are authorized statements of law by governmental institutions, such as written opinions of the court, constitutions, statutes, and rules of court. Secondary authorities are statements about the law that are used to explain, interpret, develop, locate, or update primary authorities.
- Q. 9. Binding (or mandatory) authority is authority that must be followed by any court lower in the hierarchy. Binding authority is always primary authority, but not all primary authority is binding.
- Q. 10. A case is “on point” if it shares the same significant facts with the case at issue and does not differ in any significant facts from the instant case.
- Q. 11. A court can reject a decision of a higher court as not being binding by distinguishing the cases on their facts or issues, and thus finding that the previous case is different in some significant way.
- Q. 12. False (secondary sources can only be persuasive authority).

### PART 3

- Q. 13. The three broad categories are primary sources; secondary sources; and index, search and finding tools.
- Q. 14. Primary sources are authoritative statements of legal rules by governmental bodies. They include court opinions, constitutions, statutes, and rules of court. Secondary sources are materials about the law that are used to explain, interpret,

develop, locate, or update primary sources. Examples include law reviews, legislative histories, journal articles, newsletter articles, bench books, and procedure guides. These secondary sources can be interpretive and may include analysis and critical commentary.

- Q. 15. Bound copies or paper resources are updated through inserts, often called pocket parts for statutes and slip opinions. They are usually updated once a year and are found in the back of each volume or code. When the pocket parts get too bulky, a new hard cover volume is published.
- Q. 16. “Black Statutes” (*Vernon’s Texas Codes Annotated*) is available from West and includes the complete text of the law, case annotations that provide interpretations by courts, cross-reference sections, historical notes and commentaries that give background interpretations of the law, a general index, some individual volume or code indices, an annotation index, and law review article citations.
- Q. 17. Lexis and Westlaw.
- Q. 18. True.

#### **PART 4**

- Q. 19. A citation is a reference to a law or case, or a reference to a source of legal authority that allows a researcher to locate a cited source.
- Q. 20. They are reference guides that explain the form and meaning of legal citations, as well as give the proper way to reference and cite legal material.
- Q. 21. The following abbreviations stand for:
- U.S.C.        *United States Code*
  - S. Ct.        *Supreme Court Reporter*
  - F.2d         *Federal Reporter, 2nd Series*
  - S.W.2d      *South Western Reporter, 2nd Series*
  - v.            *versus*
- Q. 22. The following abbreviations stand for:
- A.B.C.        Alcoholic Beverage Code
  - C.C.P.        Code of Criminal Procedure
  - E.C.         Education Code
  - F.C.         Family Code
  - G.C.         Government Code
  - H.S.C.        Health and Safety Code
  - P.C.         Penal Code

#### **PART 6**

- Q. 23. Every two years (in odd-numbered years) for 140 days and when the Governor calls a special session.
- Q. 24. The House of Representatives and the Senate.
- Q. 25. True.

Q. 26. The following phrases were added: \$500,  
\$1,250, and  
a misdemeanor punishable by a fine of not less than \$1,000 or more than \$2,000 if  
the person is convicted of a second or subsequent offense under this section  
committed within five years of the date on which the most recent preceding  
offense was committed.

The following was deleted:  
\$200, and  
\$1,000

The underlined text is new language that is to be added to a statute or code. The  
“strike-thru” indicates language that is to be deleted.

Q. 27. All of the laws passed by a legislative session that are published in volumes in  
chronological sequence.

Q. 28. The Texas Legislative Council website or the Texas Legislature Online website.

## **PART 7**

Q. 29. By the names of the parties to the lawsuit.

Q. 30. *In re* is used in a case citation to signify that there are no adversary parties. It  
means in the affair; in the matter of; concerning.

Q. 31. *Ex parte* in a case citation means that a special proceeding was involved. It means  
by or for one party; done for; on behalf of.

Q. 32. The legal editors (rather than the court) write the headnotes.

Q. 33. A majority opinion is usually written by one judge and represents the principles of  
law that the majority of the court deemed operative in a given decision. It has the  
greatest precedential value. A concurring opinion agrees with the result reached by  
the majority, but disagrees with the precise reasoning of the majority.

Q. 34. A plurality opinion is agreed to by less than a majority as to the reasoning of the  
decision, but it is agreed to by a majority as to the result.

Q. 35. Affirmed denotes that the appellate court reached a decision that agrees with the  
result reached in the case by the lower court.

Q. 36. Reversed denotes that the appellate court disagrees with the result reached by the  
lower court in the case.

Q. 37. The law is ever changing; therefore researchers must have an avenue to check the  
case or statute to determine if it is still “good” law (a law that has not been  
overturned by case law or a change in the statute). Shepardizing is the easiest and  
quickest way to determine if a case can be relied upon and has not been reversed  
by a higher court or overruled by a subsequent decision of the same court.  
Shepardizing will also help the researcher to determine whether a case has been  
superseded (or made into “bad” law) by statute.

*Shepard's Citations* serve numerous purposes:

- to verify that the case still has precedential value and has not been overturned;
- to locate parallel citations;
- to identify other primary and secondary sources of legal information on the topic; and
- to review writ and petition history notations.

## **PART 8**

Q. 38. Attorney general opinions are organized by the name of the Attorney General at the time the opinion was released and then numbered chronologically. Example: DM-1 (1991) would refer to the first opinion released by Dan Morales when he took office as the Texas Attorney General.

Q. 39. No.

## **PART 9**

Q. 40. False (there are several).

Q. 41. Some questions that should be asked to help frame the legal issue are:

- Which branch of government is involved: legislative, judicial, or executive?
- Is the matter civil or criminal?
- Does it involve federal law, state law, or ordinance?
- Is it substantive or procedural?
- Who has jurisdiction?
- Are the sources being consulted binding or persuasive?

Q. 42. Often it is useful to consult secondary sources for an overview of the relevant areas. The search should start with the most general and progress toward the specific.

Q. 43. True.

Q. 44. The law is modified or changed constantly. There may be, for example, a new attorney general opinion or case on the issue since the search was initiated.